



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 1088-98
3 May 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED],
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Dir, NCPB ltr 5420 Ser:99-22, 8 Mar 99
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his disability be rated at 30%, vice 0%; or, that he be restored to the TDRL; or, that he be granted additional active duty service credit and then authorized early retirement under the Temporary Early Retirement Authority (TERA).

2. The Board, consisting of Ms. Schnittman and Bartlett and Schultz reviewed Petitioner's allegations of error and injustice on 15 April 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was released from active duty on 28 June 1993 and transferred to the Temporary Disability Retired List (TDRL) with a rating of 30% for post traumatic stress disorder related to his experiences during the attack on the USS Stark and his participation in damage control efforts, for which he received a personal decoration from the Secretary of the Navy. He completed 14 years, 8 months and 29 days of active service. The Department of Veterans Affairs rated his condition at 30% from 28 June 1993. He was examined by an Air Force physician on 14 March 1995 and given the following diagnoses: Axis I, post

traumatic stress disorder, moderate, in full remission, with marked impairment for military service and mild impairment of civilian, social and industrial adaptation; Axis II, no diagnosis; and Axis III, hypertension. The physician noted Petitioner did not require medication or psychotherapy at that time. On or about 25 April 1995, the Record Review Panel (RRP) of the Physical Evaluation Board determined that he remained unfit for duty and that his condition was ratable at 0%. Petitioner initially demanded a formal hearing, but later withdrew his demand and accepted the findings of the RRP. He was discharged with entitlement to disability severance pay on 9 April 1996. He was evaluated at a VA facility on 15 September 1997, and given a diagnosis of post traumatic stress disorder in full remission. The examiner noted that Petitioner had worked full time at a Naval Activity Support Center since 1996. Notwithstanding the improvement in his condition, the VA confirmed and continued the 30% rating on 6 October 1997. It appears that the continuation of the 30% rating was in accordance with that agency's policy against precipitous reduction of longstanding ratings, and did not reflect the degree of impairment caused by the post traumatic stress disorder at that time.

d On 8 March 1999 the Board was advised by the Director, Naval Council of Personnel Boards, in effect, that Petitioner was properly discharged by reason of physical disability with a rating of 0%, and that no change in his record is warranted. The decision to remove Petitioner from the TDRL was correct, given that the improvement in his symptoms while he was on the TDRL was "...related to the limitation of triggering, intrusive images associated with active duty." He remained unfit for duty, however, because of his active duty rating of hull technician, which by definition would require contact with ships (and an increase in symptoms). Although he had experienced good social and industrial adjustment during his tenure on the TDRL, to include stable work and family situations, a marked impairment for military service remained. By assigning a 0% rating, the RRP was stating that Petitioner was at least minimally disabled and entitled to severance pay. The Director recommended that the petition be denied.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the opinion of the Director, Naval Council of Personnel Boards, the Board finds that Petitioner should have been found fit for duty by the Physical Evaluation Board and given the opportunity to reenlist. In this regard, the Board concludes that given Petitioner's lengthy and faithful service to the Navy, it was unjust to separate him because of the possibility that his combat incurred mental disorder, which was in full remission, might have recurred had he been restored to active duty.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.


RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that the Secretary of the Navy found him fit for duty on 5 April 1996; that he was not discharged on 6 April 1996; that he reenlisted in the Navy on 6 April 1996, and served from that date until 31 August 1996, when he was released from active duty; and that he was transferred to the Fleet Reserve effective 1 September 1996, under TERA, upon his completion of 15 years of active service.

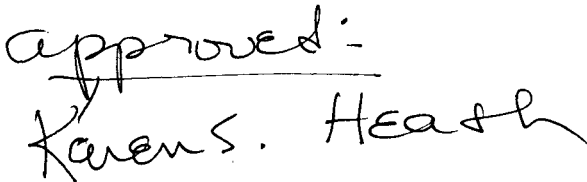
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

approved:

Karen S. Heath


W. DEAN PFEIFFER
Executive Director

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

JUL 13 1999